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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/764,735 01/17/01 CLARKSON

K J3515 (C)

000201
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PATENT DEPARTMENT
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HM22/0925

EXAMINER

DEWITTY, R

ART UNIT

PAPER NUMBER

1616

DATE MAILED:

09/25/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademark

Office Action Summary

Application No.

09/764,735

Applicant(s)

CLARKSON ET AL.

Examiner

Robert M DeWitty

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-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claims 1-26 are pending in the instant application. Claims 22-26 are withdrawn from further consideration.

Election/Restrictions

1. Claims 22-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 8.

Regarding Applicants assertion that searches for Group I, Group II, and Group III Would lead one to the same references, and therefore would not significantly increase the search effort, this assertion is incorrect based on the following reasoning: because the composition of Group I can be made by another materially different process, and the composition can be used in materially different processes, the search would have to be extended to take into account the different processes of making and the different uses.

The Election/Restriction is thus maintained.

Specification

2. The abstract of the disclosure is objected to because the abstract contains claim limitation language "...selected from the group consisting of...." (line 10-11). Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraskin (U.S. Pat. No. 4,356,190).

Kraskin relates to compositions which inhibit formation of undesirable products on body surfaces resulting from microbial action. The products are comprised of amino acid compounds, carriers, and other ingredients.

Suitable amino acid compounds include aminopolycarboxylic acid compounds. The best known aminopolycarboxylic compounds include ethylenediaminetetraacetic (EDTA) acid, diethylenetriaminepentaacetic (DPTA) acid, and N-hydroxyethylethylenediaminetriaacetic (HEDTA) acid (col. 4, lines 33-52). The compounds may be applied to dressings or other material such as bed pads, clothing etc. or it may be applied topically to dermal surfaces (col. 5). Topical applications are suitable for inhibiting the development of undesirable inflammatory conditions of the skin and for inhibiting malodor development (col. 5, line 66-col. 6, line 1).

Suitable carriers for use in topical applications include lotions, ointments, aerosols, water solutions, creams, gel sticks and the like (col. 6, lines 4-7).

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Other ingredients include alcohols, such as ethanol, isopropanol; witch hazel water; propellants; perfumes; etc. In dermal preparations for the control of inflammatory skin conditions, aqueous compositions are desirable (col. 5, lines 15-26).

It is further taught that for topical applications, the amino acid compounds are preferably employed in the form of alkanolamine salts. When the carrier is aqueous, the salt may be formed in the composition by admixing the free acid and the alkanolamine in the aqueous carrier (col. 5, lines 34-38).

The definition of "aqueous" is "watery; prepared with water".

Based on the above, an anti-microbial composition comprising an amino acid, such as an aminopolycarboxylic acid, an alcohol carrier, and water would have been known to one of ordinary skill in the art. Motivation to use an aqueous solvent comprising an alcohol such as ethanol or isopropanol, with the amino acid, would have arisen because alcohols are suitable carriers in these compositions, and aqueous solutions are preferred for topical applications, such topical applications being desired to inhibit inflammatory skin conditions. Thus, the instant invention is made obvious.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M DeWitty whose telephone number is 703-308-2411. The examiner can normally be reached on 9:00am - 5:00pm.

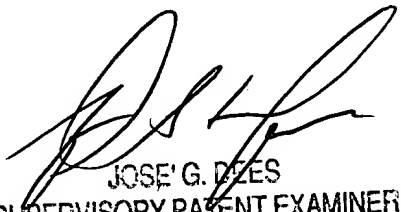
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 703-308-4527. The fax phone numbers for

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the organization where this application or proceeding is assigned are 703-308-7924 for regular communications and 703-308-7924 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

RMD
September 18, 2001


JOSE G. DEES
SUPERVISORY PATENT EXAMINER
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